



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2011

Ms. Janis K. Hampton
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2011-06971

Dear Ms. Hampton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 421122.

The Bryan Police Department (the "department") received a request for three categories of information pertaining to a specified automobile accident. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted video recording.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy

of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy. In this instance, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. Thus, the department may not withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. While we agree that portions of the submitted video recording are highly intimate or embarrassing, we note that this information pertains to an individual who is not identified. Thus, none of the submitted information implicates any individual's privacy interests. Accordingly, the department may not withhold any portion of the submitted video recording under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the submitted video recording are subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). We note section 552.130 does not apply to out-of-state motor vehicle record information. In this instance, we are unable to determine whether motor vehicle record information included on the audio portion of the submitted video recording was issued by an agency of this state. Accordingly, to extent the motor vehicle record information we have indicated on the audio portion of the submitted video recording was issued by an agency of this state, the department must withhold this information under section 552.130. The department may not withhold any information that does not pertain to motor vehicle record information issued by an agency of this state under section 552.130. The department must also withhold the discernable Texas license plate numbers that are depicted in the submitted video recording pursuant to section 552.130 of the Government Code.

We note the submitted video recording contains an insurance policy number subject to section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136. This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the department must withhold the insurance policy number we have indicated from the audio portion of the submitted video recording under section 552.136 of the Government Code.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to extent the motor vehicle record information we have indicated on the audio portion of the submitted video recording was issued by an agency of this state, the department must withhold this information under section 552.130 of the Government Code. The department must also withhold the discernable Texas license plate numbers on the submitted video recording pursuant to section 552.130 of the Government Code. The department must withhold the insurance policy number we have indicated from the audio portion of the submitted video recording under section 552.136 of the Government Code.²

As you make no further arguments against the disclosure of the remaining information, it must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/eb

Ref: ID# 421122

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including the portion of any video depicting a discernible license plate number under section 552.130 of the Government Code and an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.